IN THE HIGH COURT OF BOMBAY AT GOA.

SECOND APPEAL NO. 27 OF 2002.

1. Mr. Cyril Thomas D'Souza,
2. Mrs. Prescilla Maria D'Souza,
   r/at Umtavaddo, Calangute. ... Appellants.

Versus

1. Mrs. Martha Solis,
2. Mrs. Wilma Solis,
   r/at Umtavaddo, Calangute. ... Respondents.

Mr. J.P. Mulgaonkar, Advocate for the Appellants.

Miss S. Linhares, Advocate for the Respondents.

Coram: P.V. HARDAS, J.

Date: 5th December 2002.

ORAL ORDER.

This Second Appeal has been filed by the original plaintiffs, who had filed Regular Civil Suit No. 38/89/II. The present respondents/original defendants, being aggrieved by the Judgment and Decree of the learned trial Court, filed an appeal, being Regular Civil Appeal No. 195/2000, before the District Judge, North Goa, Panaji, who by the Judgment and Order, dated 3rd August 2001, allowed the appeal and dismissed the suit filed by the plaintiffs. Thus, the appellants/original plaintiffs, being aggrieved by the appellate Judgment, have filed the present Second Appeal.

2. The appellants/original plaintiffs had filed the suit for eviction of the respondents/original

defendants and for permanent injunction restraining the defendants, their agents and servants from entering further in the suit house or any portion thereof or doing any construction in the suit property or any part thereof. The title to the property was claimed by the appellants/original plaintiffs on the basis of a Gift Deed executed by one Maria Heroina Revistina Almina Lobo, an aunt of the plaintiff no. 1. The said Gift Deed is alleged to have been executed some time in the month of May 1966. The respondents/original defendants stated that the said Maria Heroina Lobo was not the exclusive heir to the property and, hence, had no right to gift the property to the plaintiff no. 1. They denied that plaintiff no. 1 was the absolute owner of the suit property. The respondents/original defendants claimed that they are in possession of the suit property since 1982.

3. The learned trial Court relying on the Gift Deed, dated 6th May 1966, matriz record and survey record came to the conclusion that the appellants/original plaintiffs are the exclusive owners of the suit property and also held that since the Gift Deed was more than 30 years old, there was a presumption that the said Deed was legal. The suit of the appellants/original plaintiffs, therefore, came to be decreed by the learned trial Court by directing the

respondents/original defendants to vacate the suit portion and hand over vacant and peaceful possession of the same to the appellants/original plaintiffs. The learned trial Court restrained the respondents/original defendants from entering into or doing any construction in the suit house or any portion thereof. The respondents/original defendants, being aggrieved by the Judgment and Decree of the learned trial Court, preferred an appeal to the District Judge and the learned lower appellate Court by the aforesaid Judgment and Decree allowed the appeal and dismissed the suit.

4. The learned lower appellate Court took up for consideration whether the plaintiffs had proved that they were the exclusive owners of the suit property. The learned lower appellate Court found that P.W.1 had produced the Gift Deed at Exhibit P-2 and in the said Gift Deed there was a recital that Smt. Maria Heroina Lobo was the owner in possession of the suit property. According to the learned lower appellate Court, it was no where stated how she came to be the exclusive owner of the suit property. In that background, the learned lower appellate Court held that the said Gift Deed was a private document, which could not bind any other person, if he had a right in the suit property. The learned lower appellate Court also examined Form No. III of Survey No. 199/19, which was

produced by the plaintiffs and noticed that the name of Domnic Fernandes and the plaintiff no. 1, as occupants thereof, were mentioned in the column "other rights". The learned lower appellate Court observed that the survey records produced by the plaintiffs were not promulgated and survey documents did not establish title. The plaintiff no. 1 had also produced a matriz certificate, which showed that the said property was inscribed in his name. In respect of the matriz certificate, the lower appellate Court observed that the said matriz certificate is not a document of title. The learned lower appellate Court then adverted to an admission in the cross-examination of P.W.1 wherein he has admitted that the said property originally belonged to his grandfather, namely, Aleixo Joao Lobo and his grandmother Angela Preciosa Piedade Rodrigues and this was evident on the basis of the matriz certificate Exhibit P-3, which was produced by the plaintiffs. Smt. Maria Heroina Lobo, the donor, was one of the six children of Aleixo Lobo and Angela Rodrigues. The learned lower appellate Court, therefore, at page 7 of the Judgment held that the plaintiffs had not produced any documents to prove that said Smt. Maria Heroina Lobo was the exclusive owner of the property. The learned lower appellate Court also observed that it was not even stated by P.W.1 that she (Smt. Maria Heroina Lobo) was the exclusive owner thereof. The learned

lower appellate Court has also referred to part of the cross-examination where P.W.1 admits that all the six children had equal shares in the property. The defendant no. 1 is the sister of P.W.1.

5. The learned lower appellate Court has further held that the Gift Deed can only be taken as valid to the extent of the share of Smt. Maria Heroina Lobo and the Gift Deed would not automatically extinguish the right of the defendants in the suit property. The learned lower appellate Court also repelled the finding of the learned trial Court that the Gift Deed was 30 years old as the learned lower appellate Court found that the Gift Deed was dated 6th May 1966 and the suit was filed on 24th January 1989 and, therefore, on the date of filing of the suit, the Gift deed was not 30 years old and no presumption regarding its genuineness could have arisen on that basis. In the background of the facts and the evidence which was appreciated by the learned lower appellate Court, the learned lower appellate Court held that the defendant no. 1 still remains as the co-owner of the suit property and, therefore, the plaintiffs were not entitled to the decree.

6. Mr. Mulgaonkar, the learned counsel appearing for the appellants/original plaintiffs, has

raised two submissions before me. The first is (a) whether the Additional District Judge has misconstrued the Gift Deed and (b) whether the Additional District Judge was in error in holding the Gift Deed to be a private document.

7. In respect of the first submission, I have perused the Gift Deed as well as the reasoning of the learned lower appellate Court and there does not appear to be any mis-construction of the Gift Deed. The learned lower appellate Court has rightly come to the conclusion that the donor was not the exclusive owner of the suit house and, therefore, could not have gifted the suit house to the plaintiffs. Admittedly, the defendant no. 1 was a co-owner and, therefore, the Gift Deed was valid only to the extent of the share of the donor. As to submission (b), the learned lower appellate Court has referred to the Gift Deed as a private document, in the sense that it was a document between the parties, that is, between the donor and the donee, and, if the donor had no right to gift the entire suit house, the document would not bind the other co-owners nor would it extinguish their right. It was in that respect that the learned lower appellate Court referred to it as a private document.

8. The learned lower appellate Court has given

reasons and has appreciated the evidence and documents. I see no perversity in the reasoning of the learned lower appellate Court and, therefore, no interference in Second Appeal is warranted and, accordingly, the Second Appeal deserves to be dismissed.

9. The Second Appeal is dismissed in limine with no order as to costs.

(P.V. HARDAS)
JUDGE.

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